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Kevin J. O'Connor
Partner

VIA ECF

November 26, 2018

Hon. J. Paul Oetken
United States District Judge
Southern District of New York
40 Foley Square, Room 2101
New York, NY 10007

**Re: CMG Holdings Group, as successor to XA
The Experiential Agency, Inc. v. Wagner et al
Docket Number: 1:15-cv-05814-JPO
Our File No: 11372/398630**

Dear Judge Oetken:

This firm represents Plaintiff CMG Holdings Group, as successor to XA The Experimental Agency, Inc. (“XA” or “Plaintiff”) and Third-Party Defendants Glenn Laken and Alexis Laken (“Third-Party Defendants”) in the above-referenced action against Defendants Joseph Wagner, Hudson Gray, LLC, Darren Andereck, Jessie Lomma, Michael Day, Jean Wilson, Estelle Pizzo, Studio AG, LLC, Remegio Gudin and Mixed Company, Inc. (“Defendants”).

I am constrained to respond to the submission late today by Mr. Matthews, on behalf of Defendants, of a declaration of a witness, David Tuma, purportedly in support of a letter motion for discovery, *which declaration is dated November 21, 2018*.

The same attorney who chided me previously for writing to the Court in connection with our initial retention without consulting him, has just engaged in yet another act of sand bagging. Your Honor should know that Mr. Matthews has done this repeatedly to me in the short time that I have been in this case, and his actions are nothing short of egregious. By way of example, he showed up for the deposition of a non-party witness in Hope Arkansas (Douglas Mohler), who is a business partner of Mr. Wagner and who has corroborated many of the claims made by XA in this matter. Mr. Matthews showed up at the deposition with a binder under his arm and proceeded to show the witness *literally hundreds of pages of documents* that had never been produced in discovery. Within those documents were a few documents that contained personal emails of the witness that the witness testified had been stolen from his email from Mr. Wagner. Mr. Matthews actually included an email

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that had the witness' full banking account number and routing number! The witness has vowed to bring an ethics complaint against Mr. Matthews, and I understand that that is under way.

This latest move is disturbing. Defendants did not identify Mr. Tuma on their Rule 26 Disclosures, and they have spent the better part of three years hiding emails with him, invoices and other documentation showing Mr. Tuma's involvement in fraud. They secured a declaration from Mr. Tuma nearly a week ago and then sat on it until the late afternoon before a conference with the Court. They produced the declaration weeks after the close of discovery, and now ask the Court to consider that declaration as part of a misguided application for something that still escapes me.

In sum, it is respectfully submitted that the Tuma declaration should be stricken and not considered tomorrow at the conference.

Respectfully submitted,

/s/ Kevin J. O'Connor, Esq.

Kevin J. O'Connor, Esq.
cc: All counsel of record (by ECF)